

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL J. DEMIL,

Plaintiff/Counter-Defendant,

vs.

Case No. 2012-889-CK

RMD HOLDINGS, LTD. and ROBERT
E. DEMIL,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion to appoint a receiver. Defendants have filed a response and request that the Court deny Plaintiff's motion.

Background

On August 11, 2014, this Court issued an Opinion and Order granting Plaintiff summary disposition of a portion of his shareholder oppression claim against Defendant Robert E. Demil ("Defendant Demil"). In addition, the Court set aside the portion of its June 9, 2014 Opinion and Order granting Plaintiff's request for dissolution of Defendant RMD Holdings, Ltd. ("RMD").

Based on Defendant Demil's oppressive conduct, the Court ordered a forced buyout of Plaintiff's interest in RMD pursuant to MCL 450.1489(e). A hearing regarding the forced buyout was concluded on April 7, 2015. At the conclusion of the hearing, the Court took the matter under advisement and invited the parties to file additional briefing.

Despite the future buyout of his interest in RMD, Plaintiff now moves for the Court to appoint a receiver to manage and operate RMD. Defendants have filed a response and request that the motion be denied.

On February 3, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

Applicable Law

MCL 600.2926 grants the circuit court the power to appoint receivers, and states:

Circuit court judges in the exercise of their equitable powers, *may appoint receivers in all cases pending* where appointment is allowed by law. This authority may be exercised in vacation, in chambers, and during sessions of the court. In all cases in which a receiver is appointed *the court shall provide for bond and shall define the receiver's power and duties* where they are not otherwise spelled out by law. Subject to limitations in the law or imposed by the court, the receiver shall be charged with all of the estate, real and personal debts of the debtor as trustee for the benefit of the debtor, creditors and others interested.

The court may terminate any receivership and return the property held by the receiver to the debtor whenever it appears to be to the best interest of the debtor, the creditors and others interested.

This statute does not independently grant the court the authority to appoint receivers but rather confirms that appointment of a receiver is a remedy available to the court in situations where “allowed by law.” *Wayne County Jail Inmates v Wayne County Chief Executive Officer*, 178 Mich App 634, 649-650; 444 NW2d 549 (1989). Although there are several statutes which specifically allow appointment of a receiver, the phrase “allowed by law” is not limited to these statutes, since the Supreme Court has recognized that there are cases where the trial court may appoint a receiver in the absence of a statute pursuant to its inherent equitable authority. *Id*; see *Michigan Minerals, Inc v Williams*, 306 Mich 515, 525-527; 11 NW2d 224 (1943); *Grand Rapids Trust Co. v Carpenter*, 229 Mich 491; 201 NW 448 (1924). It thus becomes apparent that, as used in the statute, the phrase “allowed by law” refers to (1) those cases where appointment of a receiver is provided for by statute and (2) those cases where the facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court's equitable jurisdiction. *Id*.

Arguments and Analysis

In his motion, Plaintiff contends that a receiver is needed based on RMD's poor 2014 performance. Specifically, Plaintiff points to financial losses attributable to "non-core" jobs taken on from 2011/2012, with particular emphasis on the Verot job, the conclusion of the DOJ investigation, including the DOJ settlement, as well as outstanding debt RMD owes to Defendant Demil. With respect to the non-core work, Defendant Demil and Scott Keller, RMD's sales manager, testified that they knew that the non-core projects, such as the Verot job, would be riskier than the types of jobs RMD had previously taken on, but that the poor economy necessitated the decision to take on non-core jobs such as Verot. Moreover, Defendant Demil and Mr. Keller testified that non-core projects have been phased out due to the poor results RMD has obtained in connection with those types of jobs. Indeed, Mr. Keller testified that the remaining non-core jobs will be completed this year, and that the losses attributable to those projects have already been reflected.

With regards to the DOJ investigation, the parties have known for years that the DOJ investigation would result in a financial hit to RMD. However, the extent of that impact was not known until late 2014 when the DOJ settlements were finalized in principal. While Plaintiff contends that the DOJ investigation evidences that RMD has been mismanaged since his employment was terminated, the projects at issue in the DOJ investigation were projects obtained at the time Plaintiff was still employed. For these reasons, the Court is convinced that the outcome of the DOJ investigation does not require the Court to appoint a receiver.

Finally, with respect to the outstanding debt RMD owes to Defendant Demil, Defendant Demil has testified that the line of credit he issued to RMD was due to the fact that he was willing to lend RMD funds at a better rate than those offered by private financial institutions.

Plaintiff does not appear to contest that RMD was in need of additional funding, and if anything RMD was benefitted by obtaining funds from Defendant Demil at a better rate than the rate offered by banks. Consequently, the Court is convinced that the outstanding debt owed to Defendant Demil is not grounds for appointing a receiver.

While RMD's financial problems over the past few years has been documented by the parties in great depth, the Court is not convinced that the poor performance of RMD due, in large part to the poor economy this area was impacted by in the early 2010s, is sufficient reason for appointing a receiver over RMD at this time. Moreover, the Verot project, which is the primary factor addressed by the parties, will be completed this year, and the financial impact of the project has already been documented in connection with the 2014 financials.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion to appoint a receiver is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: April 7, 2015

JCF/sr

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